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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/752,939

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9231

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7590

09/14/2006

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EXAMINER

GHALI, ISIS A D

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,939

Applicant(s)

GIBBINS ET AL.

Examiner

Isis Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/07/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8, 12 and 21-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 12 and 21-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The receipt is acknowledged of applicants' amendment, request for RCE, both filed 08/07/2006.

Claims 5, 7, 9-11, and 13-20 have been canceled.

Claims 1-4, 6, 8, 12, 21-39 are included in the prosecution.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/07/2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-4, 6, 8, 12 and 21-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment made to the claims to recite the limitation of: "oxygen is dispersed throughout the polymer network" has introduced new matter that has not been disclosed by the specification as originally filed. Nowhere in the specification applicants have disclosed that the oxygen is dispersed throughout the polymer network. On page 21 of the present specification, lines 10-15, applicants disclosed that the chemical reaction causes formation of oxygen that causes formation of closed cell bubbles within the matrix, wherein the cells contain an enriched concentration of gaseous oxygen. On page 26 of the present specification, lines 15-26, applicants disclosed the foam or bubbles of the present invention are formed by chemically foaming the polymer network and disclosed that the liberated oxygen becomes entrapped as bubbles formed in situ. Example 1, on page 43 of the present specification describes the preparation of oxygen containing closed cell foam device, however, nowhere the example support the newly added limitation of "oxygen is dispersed throughout the polymer network". Therefore, applicants have no support for the limitation of "oxygen is dispersed throughout the polymer network". In accordance to MPEP 714.02, applicant should specifically point out to where in the disclosure a support for any amendment made to the claims can be found.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4, 6, 8, 12 and 21-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 38 and 39 are confusing as they recite "oxygen is dispersed throughout the polymer network" because the claims recite at the same time that the oxygen is present in closed cells within the matrix and not dispersed throughout the matrix. In addition, the claims recite that the "matrix is formed prior to gas production" and also recite that "the oxygen is formed in the matrix during manufacture of the matrix".

Regarding claims 30 and 36, the expression "resorbable polymers" does not set out the metes and bounds of the claim. Recourse to the specification does not define the expression.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 1-4, 6, 8, 12, 21-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0042587 ('587) in view of US 5,792,090 ('090).

The present claim 1 is directed to a product comprises matrix of cross-linked polymer containing oxygen generated from reaction of hydrogen peroxide and a catalyst.

US '587 teaches polymeric cross-linked foam reservoir comprising cellulose derivatives and active agent including anti-infective agents and growth factors (abstract; paragraphs 0035, 0049, 0050). The foam reservoir is closed cell foam that can be produced chemically (paragraph 0036).

However, US '587 does not teach the type of gas in the foam and the chemical production of the foam as claimed in claim 1. US '587 does not teach the polyacrylamide polymer as claimed in claim 37.

US '090 teaches wound dressing that supply oxygen to the wound for optimal healing and minimization of infection because the wound causes diffusion limited access and limits the oxygen supply to the wound (abstract; col.2, lines 28-31). The

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dressings comprises hydrogel or polymeric foam comprising elements that react to generate oxygen that are hydrogen peroxide and catalyst such as magnesium dioxide or enzymes (col.6, lines 6-26). The catalyst is contained in the foam which absorbs hydrogen peroxide into the foam to produce oxygen (col.7, lines 48-55). The hydrogel or foam can be guar gum or polyacrylamide and further comprises collagen, i.e. non-gellable foam (col.4, lines 39-42; col.12, line 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide polymeric cross-linked closed cell foam that can be produced chemically as disclosed by US '587, and produce the foam by oxygen gas delivered by the reaction of hydrogen peroxide and catalyst and replace the polymer by polyacrylamide as disclosed by US '090, motivated by the teaching of US '090 that such polyacrylamide polymer foam and oxygen are optimal for minimization of infection, with reasonable expectation of having polyacrylamide cross-linked closed cell foam entrapping oxygen produced chemically by the reaction of hydrogen peroxide and catalyst with minimal infection to the underlying skin.

Response to Arguments

9. Applicant's arguments with respect to claims 1-4, 6, 8, 12, 21-39 have been considered but are moot in view of the new ground(s) of rejection.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (571) 272-0595.

The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isis Ghali
Examiner
Art Unit 1615



ISIS GHALI
PATENT EXAMINER